

EXHIBIT A

Declaration of David Sparks

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UTAH PHYSICIANS FOR A HEALTHY ENVIRONMENT, INC., Plaintiff, v. DIESEL POWER GEAR, LLC, et al. Defendants.	DECLARATION OF DAVID SPARKS - EXHIBIT "A" – TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT Case No.: 2:17-CV-00032 Judge Robert J. Shelby Magistrate Dustin Pead (Hearing Requested)
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I, David Sparks, declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The evidence set out in this declaration is based on my personal knowledge.

2. At all times since the formation of B&W Auto, LLC in April, 2011 I have been a manager of B&W Auto, LLC. At all times since the formation of Diesel Power Gear, LLC (“DPG”) in March, 2013, I have been a manager of DPG.

3. In 2009, when I was in my early 20s, I started a side business buying broken down cars, getting them running again, then flipping them for a small profit.

4. I soon learned that under Utah law, I needed a used car dealership license to continue to operate my quickly building business, so I acquired B&W Auto, a dealership based in Provo, Utah, and in April, 2011, moved B&W Auto to Bountiful, Utah and established Sparks Motors as a dba of B&W Auto.

5. In 2011, I hired my close friend, David Kiley, to help me grow B&W Auto, and to be its tow truck driver.

6. In expanding vehicle inventory beyond junk cars, I learned I could obtain diesel trucks at local auctions inexpensively, many of which with performance modifications already installed, that only needed simple repairs and/or cosmetic improvements, then re-sell them for a profit.

7. By early 2012, B&W Auto expanded its used dealership to include a repair shop, with the idea to evolve the junk car flipping business to a more customized build shop.

8. At around this time, B&W Auto purchased a Dodge Ram 2500 Megacab and I had an idea to do a custom long bed conversion, as well as install a 6” suspension lift and bigger tires.

9. After the work was completed on the Dodge Ram 2500 Megacab, B&W Auto created a Facebook page in summer, 2012, called Diesel Trucks for Sale, to list the truck for sale.

10. The advertisement for the Dodge Ram 2500 Megacab went viral, and B&W Auto easily sold the vehicle for a decent profit.

11. At this time, I discovered the world of diesel truck enthusiasts, and a new business model for B&W Auto was born.

12. I had a vision to use social media to build B&W Auto, create diesel truck brand related merchandise, and develop an online marketing strategy.

13. At around this time, I promoted David Kiley to handle the creation of marketing content. I also contracted an internet website designer to build a website for B&W Auto, and a t-shirt graphic designer to create a t-shirt design for the company to market.

14. The contracted designer created a t-shirt that read "Rollin Coal" with a pair of smokestacks displayed. T-shirts were listed for sale in the end of 2012 and orders were immediately pouring in.

15. By March, 2013, DPG was formed as a lifestyle brand company, to handle sales of t-shirts, bumper stickers, hats, and other assorted accessories that went with the diesel truck lifestyle.

16. B&W Auto published its first video on www.youtube.com, in March, 2103 showing two trucks playing tug of war with each others' bumpers in the snow. The video was a huge success, with approximately four million views.

17. Using social media to develop marketing ideas, in early 2013, B&W Auto posted pictures of trucks and asked fans what truck was best to custom build.

18. From there, in April, 2013, I decided to create a sweepstakes giveaway promotion program to build DPG's business, using one of B&W Auto's custom built trucks, based on social media responses from fans, as the prize.

19. DPG contracted with a reputable third party sweepstakes promotions company to organize and ensure compliance with sweepstakes laws.

20. DPG also contracted with B&W Auto to acquire, custom build, and transfer title to the truck that is awarded as a gift to the sweepstakes winner.

21. During this time, I hired Keaton Hoskins, who loves custom built diesel trucks, to help build DieselSellerz.com (who has been dismissed from this lawsuit), and Jared Sorenson (not a named party to this lawsuit), to be the marketing manager.

22. B&W Auto and DPG were very successful at using social media for marketing and business development, and developed Facebook pages and Instagram accounts to develop following within the diesel truck community. They also created outlandish videos, which were posted on www.youtube.com, generating a lot of publicity.

23. I am not involved with the creation of all of the videos, and I had nothing to do with the creation of the Prius Paul video. That video was created by a former marketing manager, Jared Sorenson, who was terminated in part because of the offensive nature of that video. I did not participate in the making of that video. I caused that video to be removed from

websites we have any control over, but to the best of my knowledge, Jared Sorenson, still has it available for public viewing on www.youtube.com.

24. As a result of the popularity in the videos, in November, 2013, David Kiley appeared on the Jay Leno Show. B&W Auto and DPG both quickly became established names in the diesel truck community.

25. DPG and DieselSellerz.com, LLC grew at an enormous rate, so I hired Josh Stuart ("Stuart"), in March, 2014, to be the chief financial office and chief operating officer of those two spin-off companies.

26. In 2014, DPG decided to form 4x4 Anything, LLC, to expand its business to sell parts automotive parts and accessories for the diesel truck enthusiast. 4x4 Anything is a d/b/a of DPG, and sells automotive parts and accessories on its online store, through drop shipment contractual agreements with third party vendors.

27. As a result of the smashing success of B&W Auto's custom built trucks, DPG's sweepstakes program and the businesses' social media marketing, the Discovery Channel developed and launched a reality television show, called the "Diesel Brothers" on January 4, 2016, and in its first season, averaged over two million viewers per episode. The show is currently starting its fourth season. The four individual defendants collectively comprise the "Diesel Brothers" who are the primary stars of Discovery Channel television show.

28. In July, 2016, Plaintiff sent a notice of intent to the Diesel Brothers to commence the instant action, which included a list of parts offered for sale on 4x4 Anything's site, that it asserted violated the CAA.

29. Upon receipt of Plaintiff's notice letter, all parts listed in the notice letter were immediately and permanently removed from the website more than five months prior to the date the instant action was filed.

30. Plaintiff has brought Clean Air Act ("CAA") claims against B&W Auto for the modification of diesel trucks, which effect defeats or reduces emissions control devices. Plaintiff further alleges B&W Auto has caused its modified vehicles to be operated in the State of Utah, and sold those vehicles with emissions control devices removed.

31. Plaintiff has CAA claims against me personally for the modification of B&W Auto owned diesel trucks, which effect defeats or reduces emissions control devices, as well as for the operation and sale of those vehicles, solely in my capacity as manager of B&W Auto.

32. Since B&W Auto started its business in April, 2011, it has owned approximately 16 diesel trucks in which emission control devices were removed, often prior to B&W acquiring the truck.

33. B&W Auto has sold, or given away to DPG sweepstakes winners, most of those 16 vehicles "as is" to out-of-state purchasers or winners, and those vehicles were only briefly operated in Utah.

34. B&W Auto currently owns three of those 16 vehicles, which are known as Bro-Dozer, Hercules and Megaram. These vehicles are not capable of passing safety inspections due to off-road modifications, and are strictly *not* for use on Utah roads.

35. Another one of the 16 vehicles is the 2013 Ford F250 diesel pickup truck, that Plaintiff ultimately acquired. I have never had a personal ownership interest in this truck.

36. B&W Auto acquired this truck vehicle in 2014 from a local Utah auction “as is”, with approximately 33,231 miles, and the emissions modifications and H&S tune were already on the truck prior to B&W Auto purchasing it.

37. B&W Auto only did cosmetic work to this truck before listing it for sale.

38. Kam Hoskins, a former employee for B&W Auto, is listed as contact person in the advertisement for the 2013 Ford F250 diesel pickup truck, and he would have listed this advertisement as part of his duties as employee for B&W Auto. Further, B&W Auto is the owner of the vehicle and is listed as the seller in the advertisement.

39. The 2013 Ford F250 diesel truck quickly sold in 2014 to an out-of-state purchaser.

40. Plaintiff has brought CAA claims against DPG for the alleged “sale” of sweepstakes trucks, but DPG has never sold any vehicles.

41. Plaintiff has brought CAA claims against me personally, for the alleged “sale” of sweepstakes trucks solely in my capacity as a manager of DPG,

42. Plaintiff has brought CAA against DPG for past sales of certain products on 4x4 Anything’s website, which Plaintiff claims violate the CAA.

43. Plaintiff has brought CAA claims against me personally, for past sales of certain products on 4x4 Anything website, solely in my capacity as a manager of DPG.

44. All parts listed on 4x4 Anything's website, and advertisements for those parts, were obtained from large third party vendor suppliers. DPG had no reason to believe that the sale or offer to sale of any of these parts would violate federal law.

45. Immediately upon notice from Plaintiff, DPG permanently removed all listings off 4x4 Anything's site for parts identified in Plaintiff's letter.

46. More than five months passed between the time DPG ceased selling all parts identified in Plaintiff's letter and the date the instant action was filed.

I declare the foregoing is true and correct, under penalty of perjury.

Dated this 14th day of November, 2017.



David Sparks